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12 Attorneys for Defendants  
13 MERRILL LYNCH & CO., INC. and  
14 MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC.

15 **UNITED STATES DISTRICT COURT**

16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 TREVOR CALLAN, TIMOTHY CALLAN  
18 and RYAN CALLAN, individually and on  
19 behalf of all others similarly situated,

20 Plaintiffs,

21 vs.

22 MERRILL LYNCH & CO., INC., ET AL.,

23 Defendants.

24 CASE NO. 09-CV-0566 BEN (WMc)

25 **DECLARATION OF BRIAN BURKE IN  
26 SUPPORT OF MERRILL LYNCH  
27 DEFENDANTS' MOTION FOR  
28 JUDGMENT ON THE PLEADINGS OR,  
IN THE ALTERNATIVE, FOR  
SUMMARY JUDGMENT OR PARTIAL  
SUMMARY JUDGMENT**

29 **Date:**

30 **Time:** 10:30 a.m.

31 **Courtroom:** 3

32 **Judge:** Hon. Roger T. Benitez

## **DECLARATION OF BRIAN BURKE**

I, BRIAN BURKE, declare as follows:

5       1. I am an attorney with the law firm Shearman & Sterling LLP. I represented certain  
6 defendants in the matter of *In Re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA*  
7 *Litigation*, Master File No. 07-cv-9633 (JSR)(DFE), Case No. 07-cv-10268 (JSR)(DFE), in the  
8 United States District Court for the Southern District of New York ("the ERISA Action"), which  
9 was settled pursuant to an Order and Final Judgment entered on August 24, 2009. I am over 18  
10 years of age. I have personal knowledge of the facts and matters set forth in this declaration and  
11 could and would testify competently and truthfully to the same if called as a witness and placed  
12 under oath.

14       2. I make this declaration in support of the Merrill Lynch Defendants' Motion For  
15 Judgment On The Pleadings Or, In The Alternative, For Summary Judgment or Partial Summary  
16 Judgment.

18       3. Attached hereto as Exhibit A is a true and correct copy of the Declaration of  
19 Jennifer M. Keough ("Keough Declaration"), Executive Vice President of The Garden City Group,  
20 Inc. ("GCG"), Re: Notice Dissemination and Publication. As stated in the Keough Declaration,  
21 GCG was retained by co-lead plaintiffs' counsel in the ERISA Action to serve as the Notice  
22 Administrator in connection with the class action settlement of the ERISA Action. The Keough  
23 Declaration attached hereto as Exhibit A was filed with the court by co-lead plaintiffs' counsel as  
24 Exhibit #1 to co-lead plaintiffs' counsel's joint declaration in support of final approval of the  
25 settlement filed on June 26, 2009, which is Docket Entry No. 257 in the ERISA Action Master  
26 File Case identified above.

1       4. As stated in the Keough Declaration, GCG was responsible for disseminating the  
2 Notice of Proposed Settlement to the Class Members in the ERISA Action, using a list of Class  
3 Members and their addresses which was provided to GCG by co-lead plaintiffs' counsel in the  
4 ERISA Action on March 30, 2009. I was responsible for obtaining that list of the names and  
5 addresses of the Class Members in the ERISA Action from Merrill Lynch, and I provided it to co-  
6 lead plaintiffs' counsel in the ERISA Action. The list provided to co-lead plaintiffs' counsel in the  
7 ERISA Action included the names of the Plaintiffs in the above-captioned case, Trevor Callan,  
8 Timothy Callan, and Ryan Callan (collectively, the "Callans"), and stated their addresses as  
9 follows:

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11

**Trevor M. Callan**

12

5932 Avenida Chamnez

13

La Jolla, CA 92037

14

15

**Tim S. Callan**

16

840 Turquoise St., #311

17

San Diego, CA 92109

18

19

**Ryan J. Callan**

20

4586 Lisann Dr.

21

San Diego, CA 92117

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5. As the Keough Declaration also states, the Notice of Proposed Settlement of the  
ERISA Action was mailed on April 6, 2009 to the Class Members, which, to the best of my  
knowledge, would have included being sent to the Callans at their above-stated addresses.

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1       6. To the best of my knowledge, none of the Callans identified above objected to the  
2 settlement of the ERISA Action pursuant to the Notice of Proposed Settlement of the ERISA  
3 Action.

5 7. As is commonplace among settlements of ERISA class actions, the settlement class  
6 in the ERISA Action was a non-opt out class.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on May 28, 2010, at New York, New York.

Brian Burke mg

BRIAN BURKE